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I. Persons Giving Notice

DHJB Development, LLC (DHJB) a Texas limited liability company, whose address is 808 Highway 46 E, Boerne, Texas 78006. DHJB owns, controls and is developing approximately 480 acres of land in Comal County, Texas (aka Johnson Ranch), which lies adjacent to and immediately upstream of property owned by the Grahams.

II. Person(s) Responsible for and the location of the CWA Violations

The Grahams own approximately 52.454 acres of land in Comal County, Texas (the Graham Property). Terrell Graham without obtaining the necessary permits or approval from Federal and State agencies constructed a dam (the Graham Dam) across Unnamed Tributary 21, located adjacent to and immediately downstream of Johnson Ranch. *See* Exhibit A. The Graham Dam has since mostly washed away dispersing and discharging sediments, soil, rock and other pollutants throughout “waters of the United States” in violation of the CWA. In addition the Grahams have dumped trash (used oil filters, rusting appliances and other waste) in and along the banks of Unnamed Tributary 21 where it presents and ongoing threat to “waters of the United States”. *See* Exhibit B.

III. CWA Violations

Pursuant to sections 505(a) and (b) of the CWA, 33 U.S.C. §§ 1365 (a)-(b), Noticers intend to sue the Grahams for violating, and continuing to violate, effluent standards and limitations as defined under section 505(f) of the CWA, 33 U.S.C. § 1365(f), by discharging pollutants into the waters of the United States without a permit as required by CWA section 301(a), 33 U.S.C. §1311(a).

The CWA prohibits the discharge of pollutants from a point source to the waters of the United States except when pursuant to, and in compliance with, a permit.¹ *See* 33 U.S.C. § 1311 (a); 33 U.S.C. § 1342. The CWA defines “pollutant” to include “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6). The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and “any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.” 33 U.S.C. § 1362(12). “Point source” is defined by the CWA as “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). The Grahams have violated and continue to be in violation of the CWA.

The foregoing list of CWA violations is not exhaustive. Noticers intend to include in their lawsuit additional violations, legal or factual, revealed in the course of investigation or discovery.

¹ The State of Texas has been delegated authority by the Environmental Protection Agency to administer the Nation Pollution Discharge Elimination System (“NPDES”) permit program pursuant to 33 U.S.C. § 1342(b).

IV. Dates and Description of the CWA Violations

On or around March 12, 2014, the Grahams, specifically Terrell Graham constructed the Graham Dam across the width of Unnamed Tributary 21, which prior to construction of the dam had naturally flowed into Cibolo Creek. Unnamed Tributary 21 located approximately 125 feet downstream from the Johnson Ranch property transverses both Johnson Ranch and the Graham Property. The Graham Dam was constructed by Terrell Graham without approval or authorization from the Texas Commission on Environmental Quality, the United States Army Corps of Engineers, Comal County, or the City of Bulverde. On May 12-13, 2014, a rainfall event, of approximately two inches, occurred at Johnson Ranch and the Graham Property.

As runoff from Johnson Ranch and the Graham Property flowed from the drainage area above the Graham Dam into Unnamed Tributary 21 the natural flow and drainage of water into Cibolo was blocked by the Graham Dam. The Graham Dam caused the water flowing into the Unnamed Tributary 21 to backup and pool behind the Graham Dam. *See Exhibit C.* The water impounded by the Graham Dam, instead of being allowed to continue to flow along its historic natural drainage pattern downstream, led to scouring and alteration of the bed and flow line of Unnamed Tributary 21, the deposition of pollutants in Unnamed Tributary 21 and flooding on Johnson Ranch. Subsequent rainfall events have caused and will continue to cause violations of the CWA.

The existence and adverse impacts of the Graham Dam following the May 12-13, 2014, rainfall event were documented by Noticers' consulting engineer Tracy Bratton, P.E., in a May 2013, 2014 letter to Noticers' representative, Charlie Hill, and the Johnson Ranch Municipal Utility District. *See Exhibit D.*

But for the unauthorized and improper construction of the Graham Dam, which blocked the natural flow of water in Unnamed Tributary 21 into Cibolo Creek, those surface waters would have naturally flowed down the tributary and into Cibolo Creek as waters have done so in the past. The Graham Dam has caused and will continue to cause, alterations of the bed and banks of Unnamed Tributary 21, which in turn alter the natural flow of Cibolo Creek. The Graham Dam and its remnants have and will continue to cause flooding on Johnson Ranch, pose a safety hazard and permanently damage Johnson Ranch. The Grahams activities have violated and will continue to violate the CWA due to the continued presence of sediments, rocks, soil and pollutants from the Graham Dam that remain in Unnamed Tributary 21 and Cibolo Creek. The construction of the Graham Dam substantially altered the natural hydrologic patterns in Unnamed Tributary 21 and Cibolo Creek.

If, as the Grahams contend on page two of their December 9, 2014 Notice of Intent to Sue letter, "pollutants [that] are carried to nearby streams, rivers, lakes and estuaries"... "[i]ndividually and collectively ... can reduce water quality and threaten one or more designated beneficial uses of surface water" ; and "storm water discharges have deleterious impacts on subsurface waters, as well, since recharge of the [Edwards Aquifer Recharge Zone] aquifer is well understood to take place with little or no filtration of contaminants and since contaminants in surface water can plug crevices and other preferential flow paths by which the aquifer is recharged", then the Grahams unpermitted and illegal construction of the Graham Dam has and will continue to cause harm to the aquifer, which harm can only be ameliorated by an injunction requiring the Grahams to remove the pollutants from Unnamed

Tributary 21 and Cibolo Creek and to restore the bed and banks of Unnamed Tributary 21 and Cibolo Creek to their natural conditions.

As long as any part of the Graham Dam or any sediment, rock, soil or other pollutant from the Graham Dam is allowed to remain in Unnamed Tributary 21 or Cibolo Creek an imminent, ongoing and continuing harm to the “waters of the United States” and to Johnson Ranch exists.

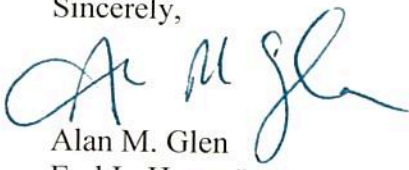
The only remedy which will permanently address the continuing harm caused to “waters of the United States” and to DHJB is mandatory injunctive relief requiring the Grahams to remove any vestige of the Graham Dam, restore the bed and banks of Unnamed Tributary 21 and remedy the damage to Cibolo Creek caused by the Grahams’ violation of the CWA.

DHJB is requesting the Court issue a permanent injunction requiring the Grahams to immediately undertake such actions to rectify the ongoing CWA violations and protect Johnson Ranch from future damages. DHJB has a probable right to relief based on the statutory prohibitions and the relief that may be granted pursuant to the CWA.

V. Request Injunctive Relief, Penalties, Attorney Fees and Costs of Suit

Noticers believe that this Notice of Intent to Sue sufficiently states grounds for filing suit under the CWA. Each day the above-described violations are not remedied constitute a separate violation under the applicable regulations. The Grahams will remain in violation of the CWA until the violations are remedied. The CWA and 40 CFR § 19.4 authorizes penalties up to \$37,500/day for each violation of the CWA. At the close of the 60-day CWA notice period, Noticers intend to file a citizen suit against the Grahams for the violations discussed above. Noticers intend to seek injunctive relief, penalties, attorneys’ fees and costs, including expert witness fees.

Sincerely,

A handwritten signature in blue ink, appearing to read "A M Glen", is written over the typed name.

Alan M. Glen
Earl L. Hagström
Sedgwick LLP

Enclosures

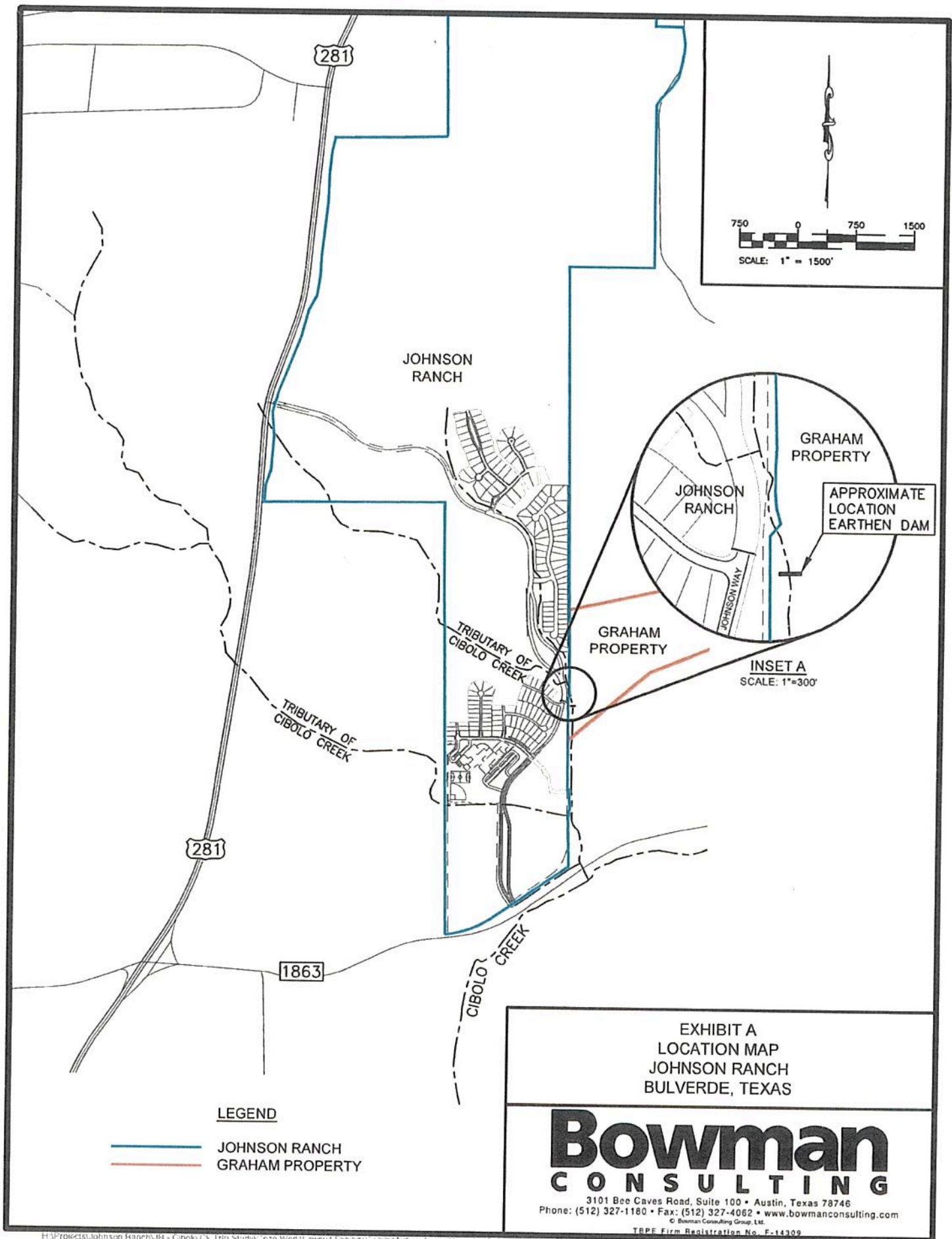




Figure F-7. Photo of school to the west of the subject property, facing west.



Figure F-8. Photo of abandoned pipes at dumpsite along west bank of the drainage.



Figure F-9. Photo of corrugated metal and overturned fiberglass boat at dumpsite along west bank of the drainage.



Figure F-10. Photo of several used vehicle oil filters at dumpsite along west bank of drainage.



Figure F-11. Photo of abandoned refrigerator, scrap/corrugated metal, and possible water heater at dumpsite along west bank of drainage.

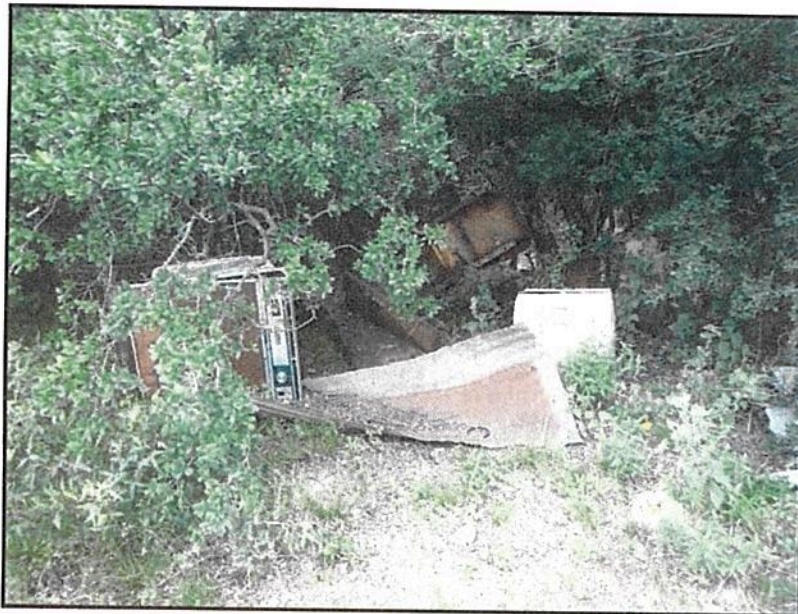


Figure F-12. Photo of abandoned dishwasher and other appliances and rusted scrap metal at dumpsite along west bank of drainage.

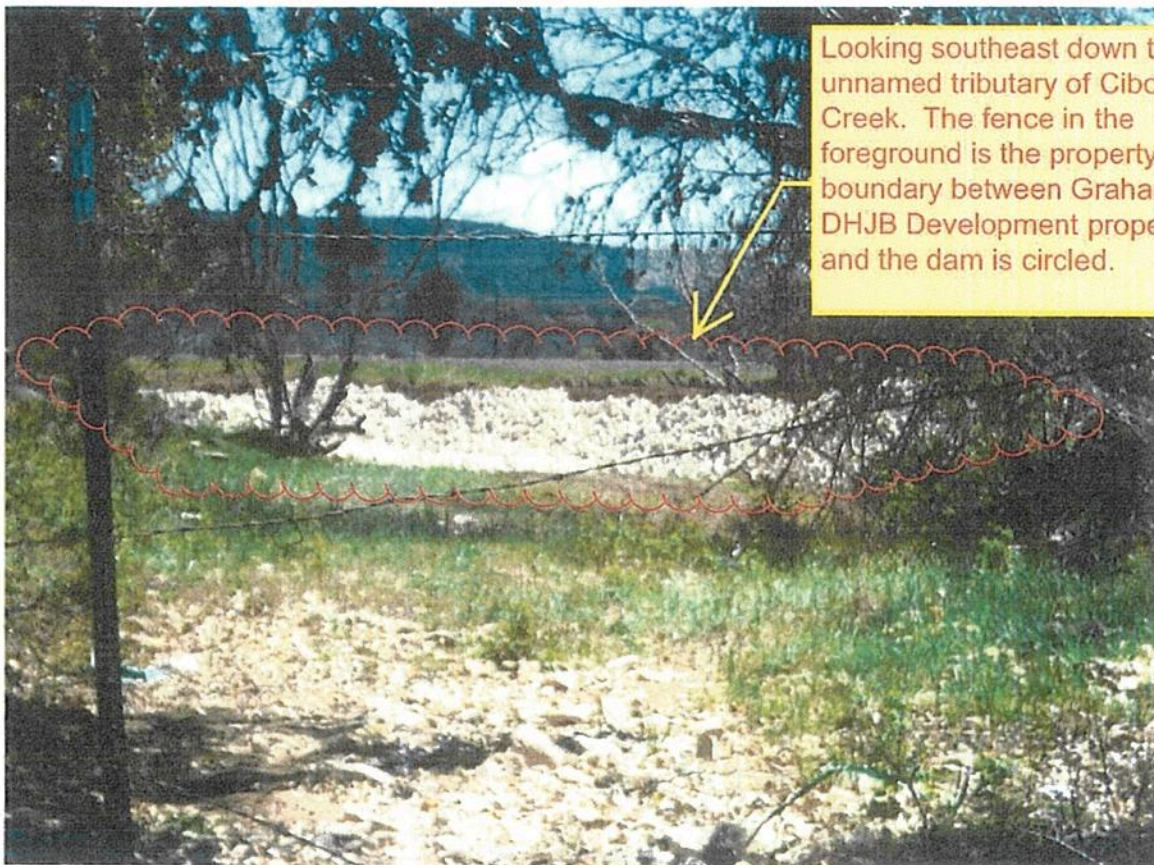


Figure F-13. Photo of miscellaneous items, such as wood, aluminum cans, metal and plastic scrap, and caulk tubes at dumpsite along west bank of drainage.



Figure F-14. Photo of the southern boundary of the subject property, facing south-southwest toward FM 1863.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



SUBJECT:	<u>Looking downstream</u>		
LOCATION:	<u>Unnamed tributary of Cibolo Creek off of Highway 1863</u>		
CITY:	<u>Bulverde</u>	COUNTY:	<u>Comal</u>
DATE:	<u>04/14/2014</u>	GPS:	<u>29.752262, -98.417028</u>
PHOTO NO.:	<u>2</u>		

OFFICIAL PHOTOGRAPH

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



SUBJECT:	Earthen dam impounding water		
LOCATION:	Unnamed tributary of Cibolo Creek off of Highway 1863		
CITY:	Bulverde	COUNTY:	Comal
DATE:	04/14/2014	GPS:	29.752262, -98.417028
PHOTO NO.:	1		

Standing on Dam (photo taken by TCEQ)
looking northwest at water backing up

OFFICIAL PHOTOGRAPH

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



SUBJECT: Front of earthen dam
LOCATION: Unnamed tributary of Cibolo Creek off of Highway 1863
CITY: Bulverde COUNTY: Comal
DATE: 04/14/2014 GPS: 29.752262, -98.417028
PHOTO NO.: 1

This material was placed in the creek channel by Graham; most of this material has since washed downstream

OFFICIAL PHOTOGRAPH

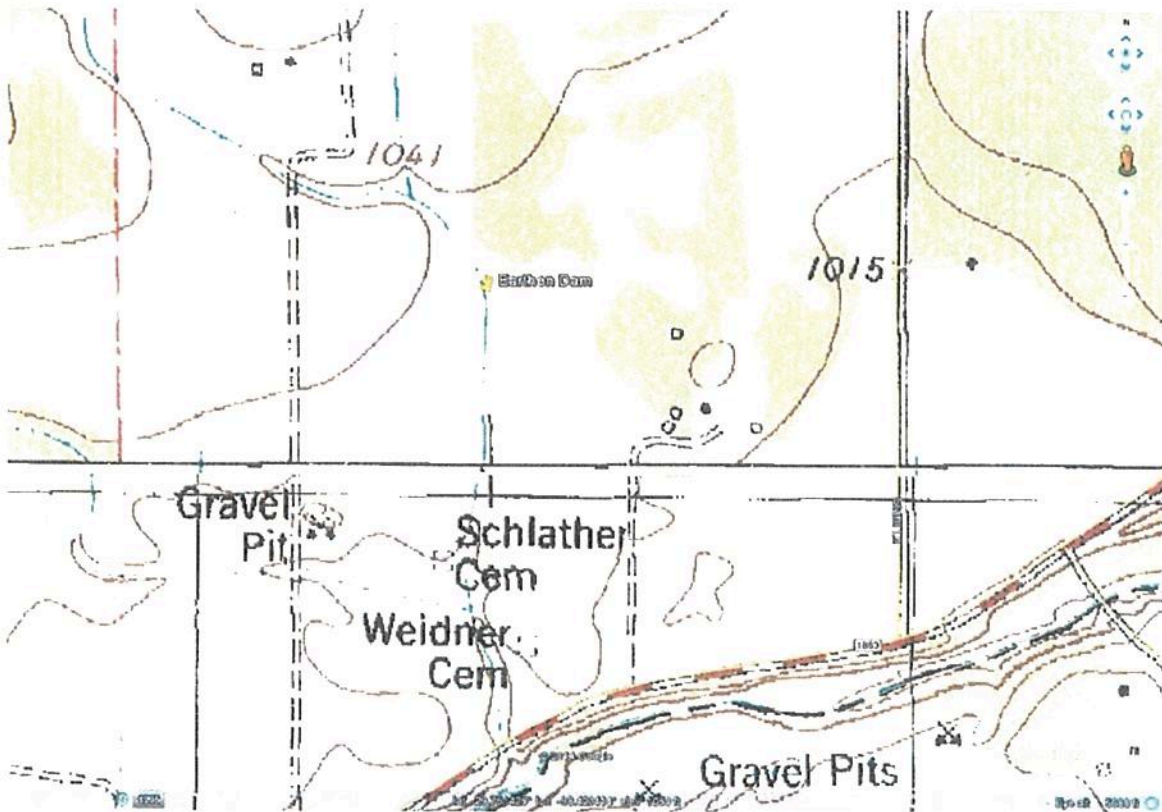
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



SUBJECT:	Satellite map of location of earthen dam		
LOCATION:	Unnamed tributary of Cibolo Creek off of Highway 1863		
CITY:	Bulverde	COUNTY:	Comal
DATE:	04/14/2014	GPS:	29.752262, -98.417028
PHOTO NO.:	1		

OFFICIAL PHOTOGRAPH

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



SUBJECT:	USGS topographic map location of earthen dam		
LOCATION:	Unnamed tributary of Cibolo Creek off of Highway 1863		
CITY:	Bulverde	COUNTY:	Comal
DATE:	04/14/2014	GPS:	29.752262, -98.417028
PHOTO NO.:	1		



May 13, 2014

Johnson Ranch Municipal Utility District
c/o Phil Haag, General Council
600 Congress Avenue; Suite 2100
Austin, Texas 78701

DHJB Development LLC
Charlie Hill
808 Hwy 46 E
Boerne, TX 78006

Subject: Johnson Ranch -- Channel Blockage Downstream of Channel A

To Messrs. Haag and Hill:

The majority of the southern portion of the Johnson Ranch subdivision drains to Channel A, paralleling Johnson Way, and leaves the property at a point approximately 2,100-ft north of FM 1863. In recent site visits at Johnson Ranch, I have observed that the natural channel downstream is blocked. From appearances, the downstream property owner has filled the natural channel with dirt and rock in an attempt to construct a dam to block water from leaving the Johnson Ranch property. See photo here illustrating the dam in the creek channel in relation to the property boundary:

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Austin, TX 78746 | p: 512.327.1180
TBPE Firm No. 14309 | TBPLS Firm No. 101206-00

bowmanconsulting.com

EXHIBIT D

Photo 1: Looking downstream at water backing up from Graham property.



Photo 2: Looking downstream near property line at water backing up.



Photo 3: Photo looking downstream at dam from property line.



Photo 4: Additional photo of water backing up onto DHJB property from Graham's dam.

